

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VINCENT SERGEY ROMANIUK,

Defendant-Appellant.

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UNPUBLISHED

March 27, 2007

No. 268813

Macomb Circuit Court

LC No. 05-004636-FH

Before: Zahra, P.J., and Bandstra and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right from that portion of the judgment of sentence requiring him to reimburse the county \$800 in appointed counsel costs. We vacate that portion of the judgment, and remand this matter for reconsideration of defendant's ability to make such payment<sup>1</sup>. The judgment is affirmed in all other respects. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted in a bench trial of resisting and obstructing a police officer, MCL 750.81d(1), and attempting to take a firearm from a police officer, MCL 750.479b(2); MCL 750.92. The trial court sentenced defendant to serve concurrent terms of seven months in jail, with credit for 90 days on each sentence, to pay costs and fees in the amount of \$180, and to repay \$800 in appointed representation costs.

A person who was afforded appointed counsel might be ordered to reimburse the county for the costs of that representation, if such reimbursement can be made without substantial hardship. A court need not make specific findings on the record regarding the defendant's ability to pay, but must provide some indication that it considered the defendant's financial situation prior to ordering reimbursement. The amount to be reimbursed must be related to the defendant's foreseeable ability to pay. A court must afford the defendant notice and an

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<sup>1</sup> We also note that the Judgment for Repayment of Defense Costs, the apparent source of the \$800.00 in attorney fees listed on the Sentence Disposition, is invalid because no attorney fee costs are included and the judgment amount (line 3) is blank.

opportunity to be heard prior to ordering repayment for appointed counsel expenses. *People v Dunbar*, 264 Mich App 240, 251-255; 690 NW2d 476 (2004); see also MCR 6.005(B).

Defendant argues that the trial court denied him due process when it ordered him to reimburse the county \$800 for appointed counsel costs without first considering his ability to pay. We agree.

We vacate that portion of the judgment of sentence requiring defendant to reimburse the county \$800 for appointed counsel costs, and remand this matter with instructions that the trial court consider defendant's ability to pay and, if appropriate, enter an amended judgment commensurate with defendant's ability to pay. *Dunbar, supra* at 256. Defendant failed to object to the reimbursement order; therefore, our review is for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). The sentencing transcript indicates that the trial court gave no consideration to defendant's ability to pay prior to ordering reimbursement. Plaintiff's assertion that the trial court considered defendant's receipt of Social Security payments as demonstrating an ability to pay is not borne out by the record. A remand for further proceedings is necessary. *Dunbar, supra* at 251-255.

That portion of the judgment of sentence requiring defendant to pay the county \$800 for the cost of his appointed counsel is vacated, and this matter is remanded to the trial court for reconsideration of defendant's ability to reimburse the county for the cost of his appointed counsel. The judgment of sentence is affirmed in all other respects. We do not retain jurisdiction.

/s/ Brian K. Zahra  
/s/ Richard A. Bandstra  
/s/ Donald S. Owens